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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/706,809	11/12/2003	C. Allen Smith	KCX-62-DIV (13267.1)	6952
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EXAMINER				
COLE, ELIZABETH M				
ART UNIT		PAPER NUMBER		
1794				
MAIL DATE		DELIVERY MODE		
05/07/2008		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/706,809

**Applicant(s)**

SMITH ET AL.

**Examiner**

Elizabeth M. Cole

**Art Unit**

1794

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 11 February 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) 1-8 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 9-22 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/CDC)
- Paper No(s)/Mail Date \_\_\_\_\_

- 4) ☐ Interview Summary (PTO-413)
- Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

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1. Claims 13-14 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 9 recites that the elastomeric polyolefin has a density of less than 0.870 but claims 13 and 14 which depend from claim 9 recite a range of 0.860-0.880 and 0.863 and 0.870 respectively. It is not clear if the claimed range of claim 9 includes 0.870 as indicated by claim 14 or not and it is not clear how the range of claim 13 can include values greater than 0.870.

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 9-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yamaoka et al, U.S. Patent No. 4,722,973 in view of Stehling et al, U.S. Patent NO. 5,382,631. Yamaoka discloses a thermoplastic elastomer composition comprising a blend of two polyolefins. One polyolefin is a hard (non-elastomeric) ethylene alpha olefin copolymer having a melt index of 0.01-100 g per cc and a density of 0.860-0.910 (see col. 6, lines 6-38) and the other is a soft (elastomeric) ethylene alpha olefin copolymer rubber having a density of 0.863 g per cc, (see example 1). The non-elastomeric component can be present in amounts of 10-90% by weight and the elastomeric component can be present in 90-10% by weight. Yamaoka et al differs from the claimed invention because it does not specify the composition can be formed

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into nonwovens and does not disclose the claimed molecular weight distribution. .

Stehling discloses ethylene polymer blends which may comprise components having a narrow molecular distribution. See col. 6, lines 8-col. 9, line 7. Stehling teaches that the narrow molecular distribution of the blend improves the properties of the blends. Therefore, it would have been obvious to one of ordinary skill in the art to have employed polymers which had a narrow molecular weight distribution as taught by Stehling in the blend of Yamaoka, in order to produce ordinary having improved properties as taught by Stehling. Stehling discloses that ethylene polymer blends can be formed into meltspun, (i.e. spunbond) and meltblown fabrics. See col. 23, line 38-col. 24, line 48. Spunbond fabrics comprise continuous filaments. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have employed the blend of Yamaoka to form nonwoven fabrics as taught by Stehling, in view of the art recognized suitability of elastomeric blends of ethylene polymers for use in forming such fabrics.

4. Applicant's arguments are persuasive. The examiner regrets the error in the previous action regarding the density disclosed in Stehling and must have just misread the number. A new rejection is set forth above.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Elizabeth M. Cole whose telephone number is (571) 272-1475. The examiner may be reached between 6:30 AM and 6:00 PM Monday through Wednesday, and 6:30 AM and 2 PM on Thursday.

The examiner's supervisor Rena Dye may be reached at (571) 272-3186.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for

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published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

The fax number for all official faxes is (571) 273-8300.

/Elizabeth M. Cole/  
Primary Examiner, Art Unit 1794

e.m.c